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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,551	04/19/2001	Addison M. Fischer	264-176	7557
7590	09/22/2004		EXAMINER	
NIXON & VANDERHYE P.C. 8th Floor 1100 North Glebe Road Arlington, VA 22201			WOO, STELLA L	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/837,551	FISCHER, ADDISON M.
Examiner	Art Unit	
Stella L. Woo	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 April 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 8-21, 24-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Griffith (US 6,236,732).

Regarding claims 1-5, Griffith discloses a portable audio playback device (headphone CD player 10), comprising:

a headset assembly (Figure 1) having a first earpiece (first housing 12) and a second earpiece (second housing 18) interconnected by a headband (bridge 24; col. 2, lines 20-22);
at least one audio speaker (speakers 28 and 30; Figs. 4 and 5; col. 2, lines 26-28);
a storing device, memory accessing circuitry and controller (playing mechanism is disposed in the first housing 12 to play audio stored on a compact disk; col. 2, lines 28-53); and
a power supply (battery 34 is disposed in the second housing 18; Fig. 7; col. 2, lines 38-41).

Regarding claims 8 and 24, first housing 12 includes a storage device slot (opening 32; Figure 3; col. 2, lines 30-32, 61-63).

Regarding claims 9 and 25, second housing 18 houses the power supply (battery; Figs. 7; col. 2, lines 38-39).

Regarding claims 10, 26, wiring 36 connects the battery 34 with the playing mechanism and speakers 28 and 30 (col. 2, lines 39-41).

Regarding claims 11, 14, 17, Griffith additionally provides for an audio control assembly (control mechanisms 38 provide standard controls including play, stop, rewind, fast forward, pause, on/off, volume control and eject; Figure 2; col. 2, lines 44-53).

Regarding claims 12-13, 15-16, control mechanisms 38 can be located on the first housing (12), the second housing (18), both, or the headband (bridge 24) (col. 2, lines 50-53).

Regarding claims 2-5, 18-21, audio information is stored on a removable compact disk (col. 2, lines 30-34).

Regarding claims 27-28, Griffith further teaches a recording function and a microphone (col. 2, lines 48-49).

3. Claim 29 is rejected under 35 U.S.C. 102(e) as being anticipated by Mershon et al. (US 6,212,282, hereinafter "Mershon").

Regarding claim 29, Mershon discloses a portable audio playback system (wireless speaker system) comprising:

a headset assembly (headphones 10; Figure 3) having a first earpiece and a second earpiece (speakers 11) interconnected by a headband (headband 12), and an audio signal receiver (wireless communication device 15 receives audio signals; col. 3, lines 39-45);

a playback unit (home audio system 1) remote from said headset unit (col. 3, lines 1-35) including a storage device (audio can be stored on a compact disc, digital audio tape, etc.; col. 3, lines 1-10), memory accessing circuitry (compact disc player, digital audio tape player, etc.; col. 3, lines 1-10), and a transmitter (transmission unit 2; col. 3, lines 11-24);

wherein the audio signals received by the headset assembly are sent to the at least one speaker (audio signals from remote audio source 3 are received by headphone 10 and output to speakers 11; col. 3, lines 36-45).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6-7, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffith in view of Okaue et al. (US 6,601,140, hereinafter “Okaue”).

Griffith differs from claims 6-7, 22-23 in that it does not specify the use of magnetic or flash memory for storing audio. However, Okaue teaches the well known use of magnetic or flash memory as an alternative to the use of a compact disk for storing audio (col. 1, lines 6-24) such that it would have been obvious to an artisan of ordinary skill to incorporate such use of either magnetic or flash memory, as taught by Okaue, within the portable audio playback device of Griffith as an alternative to the use of compact disk.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mershon in view of Griffith.

Mershon differs from claim 30 in that it does not specify the headset assembly as including a microphone for receiving voice input and the playback unit as including a recorder for recording audio data. However, Griffith teaches the desirability of incorporate a microphone

within a headset assembly to allow for audio recording in addition to audio playback (col. 2, lines 48-49) such that it would have been obvious to an artisan of ordinary skill to incorporate a microphone and recording function, as taught by Griffith, within the audio system of Mershon in order to allow for audio recording as well as audio playback from a location remote from the home audio system.

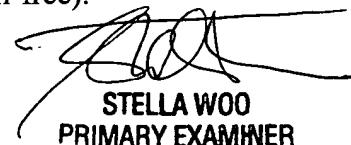
Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bush and Nishiguchi et al. show other portable audio playback headphones. Lansang, Boyden et al., and Shurman et al. show other wireless headphones with remote playback units.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stella L. Woo whose telephone number is (703) 305-4395. The examiner can normally be reached on Monday-Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



STELLA WOO
PRIMARY EXAMINER